Supreme Court, U.S.
FILED
FEB 21 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 86-1214

IN THE

Supreme Court of the United States

October Term 1986

FREDERICK W.A. KNIGHT,

Petitioner,

—against—

U.S. FIRE INSURANCE COMPANY, INSURANCE COMPANY OF NORTH AMERICA, CENTENNIAL INSURANCE COMPANY, RELIANCE INSURANCE COMPANY, FEDERAL INSURANCE COMPANY, ROYAL INSURANCE COMPANY OF AMERICA, NORTHWESTERN NATIONAL INSURANCE COMPANY, HIGHLANDS INSURANCE COMPANY, and CONTINENTAL INSURANCE COMPANY,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

LOUIS P. SHEINBAUM
Counsel of Record
120 Broadway, Suite 1825
New York, New York 10271
(212) 227-3550
Attorney for Respondents

Of Counsel:

DONALD M. WAESCHE
WAESCHE, SHEINBAUM & O'REGAN, P.C.
120 Broadway, Suite 1825
New York, New York 10271

February 19, 1987

Counterstatement of Questions Presented

(1) Should the centuries' old doctrine that a marine insurance contract is *uberrima fides,* i.e. one conceived in the utmost good faith and incubated in a legal environment which transcends the sharper practices of the world of commerce, be abrogated?

(2) Did the United States District Court for the Southern District of New York and the Court of Appeals for the Second Circuit properly apply standards for granting summary judgment?

TABLE OF CONTENTS

PAGE

Counterstatement of Questions Presented i

Table of Authorities iii

Introduction 1

Counterstatement of the Case 2

POINT I—The doctrine of *uberrima fides* should stand ... 10

POINT II—The District Court and the Court of Appeals applied proper standards in granting summary judgment 11

CONCLUSION 15

APPENDIX 16

TABLE OF AUTHORITIES

Cases:

Anderson v. *Liberty Lobby, Inc.*, 106 S.Ct. 2505 (1986) 13, 14

Calmar S.S. Corp. v. *Scott*, 345 U.S. 427 (1952) 10

Celotex Corp. v. *Catrett*, 106 S.Ct. 2548 ((1986) 14

King v. *Aetna Insurance Co.*, 54 F.2d 253 (2d Cir. 1931) 11, 12

Puritan Insurance Co. v. *Eagle S.S. Company, S.A.*, 779 F.2d 866 (2d Cir. 1985) 10, 11

Queen Ins. Co. of America v. *Globe & Rutgers Fire Ins. Co.*, 263 U.S. 487 (1924) 10

Rules:

Federal Rule of Civil Procedure 50(a) 13

Supreme Court Rule 17 1

Other Authorities:

British Shipping Laws, Vol. 10, §591, p. 590 11

English Marine Insurance Act of 1906 ..... 10, 11

G. Gilmore and C.L. Black, Jr., *The Law of Admiralty*, 55-56 (2d ed. 1975) 10

IN THE

Supreme Court of the United States

OCTOBER TERM 1986

No. 86-1214

FREDERICK W.A. KNIGHT,

Petitioner,

—against—

U.S. FIRE INSURANCE COMPANY, INSURANCE COMPANY OF NORTH AMERICA, CENTENNIAL INSURANCE COMPANY, RELIANCE INSURANCE COMPANY, FEDERAL INSURANCE COMPANY, ROYAL INSURANCE COMPANY OF AMERICA, NORTHWESTERN NATIONAL INSURANCE COMPANY, HIGHLANDS INSURANCE COMPANY, and CONTINENTAL INSURANCE COMPANY,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Introduction

Petitioner asserts that its petition should be granted:

(1) to permit this Court to review and nullify the rule of law that the doctrine of *uberrima fides* is applicable to contracts of marine insurance; and

(2) to determine whether the United States District Court for the Southern District of New York properly granted respondents' motion for summary judgment, and the Court of Appeals for the Second Circuit properly affirmed the decision of the District Court.

There is no special or important reason for the granting of a writ in this case under Rule 17 of the Supreme Court Rules.

Counterstatement of the Case

This suit was the subject of extensive pretrial discovery, including the taking of at least sixty-six depositions in Singapore, Piraeus, London and New York. When the motion for summary judgment was made, the following facts were undisputed and are indeed indisputable:

Between 1976 and 1979, when the petitioner admittedly was not an expert in Thai and Khmer antiquities, he purchased 222 statutes of stone and bronze buddhas and fabl:gods in Thailand for an amount between U.S. $60,000 and $65,000.

In December 1979 or early January 1980, he brought all of the 222 statues to the home of Veera Tangthanasaith (Veera), an antique dealer in Bangkok, who was his personal friend. On January 24, 1980, Veera issued a valuation report which appraised the statues for $22,205,000.

On April 7, 1980, Veera applied to the Director General of the Fire Arts Department of the Kingdom of Thailand for an export permit which would enable him to legally export 18 statues from Thailand. The statues were inspected by a committee of three assistant curators of the National Museum of Thailand; were found by the committee to be replicas; and an export permit was granted bearing the number 804/2523. Some of the 18 statues formed a part of the 222 statues which were eventually insured by the respondents for a voyage from Singapore to Piraeus.

Between March of 1980 and June of 1981, petitioner had his 222 statues shipped in various lots from Bangkok to Singapore. They were then stored in crates in a Singapore warehouse or godown. By the time the last shipment arrived, the interior of the godown was filled with crates. The remaining crates were left on the sidewalk in front of the building.

While the statues were being shipped to Singapore, and while the statues were in the godown in Singapore, they were uninsured.

In February of 1981, petitioner requested the London insurance brokerage firm of Hogg Robinson to obtain insurance covering the 222 statues for a voyage from Singapore to Holland in the amount of $20 million, claiming that he was going to sell them to an Arab purchaser. The insurance was placed in the London market as requested.

On May 1, 1981, petitioner requested Hogg Robinson to obtain additional insurance raising the coverage to more than $30 million for the same voyage. An additional $10 million was obtained by Hogg Robinson in the London market.

Some four months later, on September 5, 1981, Veera issued a second appraisal which upped the value of the 222 statues to $30,307,500. Veera was to receive for his services as an appraiser, 5% of the amount petitioner would receive from the sale of the objects. Veera died that same month.

Petitioner made arrangements with a freight forwarder named Damco to have his 222 statues shipped from Singapore to Holland on board the ScanDutch vessel NEDLLOYD HOORN.

The vessel was in liner service between the Far East and Europe, and was scheduled to depart Singapore on July 28, 1981.

In June 1981, Robert Jensen, petitioner's broker at Hogg Robinson, received two anonymous telephone calls. The callers knew that Jensen was petitioner's broker, and that Jensen had placed insurance covering the buddhas and fablegods for a voyage from Singapore to Holland. Jensen was informed that petitioner was about to perpetrate a fraud. Jensen informed the lead underwriters. London underwriters demanded that a portion of the statues be inspected by an appraiser of their

choice before being loaded on board the NEDLLOYD HOORN. An appraisal was conducted of 9 of the 222 statues. The appraiser, Lau, reported that the 9 which he saw were fake and highly overvalued. Specifically, Lau found that one of the bronze statues had nails in its core; one of the stone statues had been dyed to make it appear antique; and on others the edges of the carvings were rough as if newly carved, rather than smooth as they would have been if carved sometime between the 5th and 12th century.

Photographs were taken of the statues Lau examined. On some of the statues tags were affixed. They were tags bearing the number 804/2523, i.e. the number of the export permit granted by the Fine Arts Department of the Kingdom of Thailand for the 18 statues they had examined for Veera and found to be replicas. At least five of the statues examined by Lau formed a part of the 18 statues previously examined by the National Museum, a Division of the Fine Arts Department of the Kingdom of Thailand.

Upon receiving the Lau report, London underwriters voided the policy *ab initio*. Jensen sent the following telex to petitioner on July 24, 1981:

> "FOR THE URGENT ATTENTION OF MR. F. KNIGHT ROOM 3107
>
> DESPITE ALL OUR EFFORTS REGARDING YOUR SHIPMENT UNDERWRITERS HAVE TENDERED NOTICE TO CANCEL AND HAVE WRITTEN TO HOGG ROBINSON FORMALLY USING THE FOLLOWING WORDING
>
> QUOTE
>
> BEING MINDFUL OF THE FACT THAT IT HAD BECOME UNDERWRITERS INTENTION TO HAVE THE ENTIRE CARGO INSPECTED AND VERIFIED PRIOR TO LOADING, THE FOLLOWING SITUATION HAS ARISEN. THE STATUES WHICH UNDERWRITERS REPRESENTATIVES HAVE BEEN PERMITTED TO INSPECT

ARE CONSIDERED BY UNDERWRITERS REPRESENTATIVE TO BE GROSSLY OVER-VALUED AND, IN SOME, IF NOT ALL CASES, REPLICAS. THE ONLY CONCLUSION THEREFORE THAT UNDERWRITERS CAN REACH IS THAT THE CARGO IS MATERIALLY DIFFERENT AS TO CONTENT AND VALUE THAN WAS REPRESENTED TO THEM AT THE TIME OF MAKING THE INSURANCE CONTRACT. THIS CONCLUSION IS SUPPORTED BY THE RESULT OF INFORMAL ENQUIRIES MADE FOR UNDERWRITERS IN LONDON AT SHORT NOTICE. IT IS UNDERWRITERS CONCLUSION THAT THE POSITION HAS BEEN MATERIALLY MISREPRESENTED AND/OR THERE HAVE BEEN MATERIAL NON-DISCLOSURES TO UNDERWRITERS, AND AS A CONSEQUENT [sic] OF WHICH THEY ARE ENTITLED TO AVOID AND DO HEREBY AVOID THE INSURANCE CONTRACT AND OFFER TO RETURN THE PREMIUM. THE EVIDENCE CURRENTLY AVAILABLE TO UNDERWRITERS SUGGESTS THAT THE PROPER VALUE OF THE CONSIGNMENT IS NOMINAL ONLY (POSSIBLY APPROXIMATELY 1 PCT OF THE VALUE DECLARED). WHILST THEY HEREBY AVOID THE POLICY AND PROFFER A RETURN OF PREMIUM UNDERWRITERS ARE NEVERTHELESS PREPARED TO RECONSIDER THE RISK AT A PROPER VALUE TO BE AGREED

UNQUOTE"

London underwriters agreed to reconsider the risk on the condition that an expert of their choice examine all of the 222 statues. This information was conveyed to the petitioner. Instead of accepting the offer, petitioner wrote to Jensen requesting that the London insurance be canceled.

Petitioner then decided that he would have his 222 buddhas and fablegods shipped to Marseilles, where supposedly they would be purchased by the same Arab buyer. He again went to the freight forwarder, Damco, who arranged for shipment from Singapore to Marseilles on the ScanDutch vessel TOYAMA, which was also on regularly scheduled liner service.

Petitioner approached a friend in New York by the name of O'Leary who was a reinsurance broker. He in turn communicated with the brokerage firm of H.E. Yerkes & Associates and requested Yerkes to obtain insurance in the U.S. covering the 222 statues for $30 million for a voyage from Singapore to Marseilles, and thence to Paris. Neither the petitioner nor O'Leary ever told anyone at Yerkes that London underwriters had voided a prior policy on the grounds of misrepresentation and nondisclosure in that the statues were fake and highly overvalued. Rather, Yerkes' office was informed that the London market was willing to undertake the risk, but the limit of coverage which could be obtained was $20,000,000. No one at Yerkes' office was advised that the statues had been purchased by petitioner for the aggregate amount of $60,000 to $65,000. Yerkes' people were given approximately 28 photographs of buddha images, and were led to believe that the photographs depicted a portion of the 222 statues which underwriters were asked to insure. In fact, none of the photographs depicted any of the 222 statues which petitioner intended to ship from Singapore to Marseilles. Yerkes' office was informed that petitioner was a well-known art collector who enjoyed an international reputation. Yet petitioner by his own admission was not at this time an expert on Thai and Khmer art. Yerkes was given the valuation report received from Veera in the amount of $30 million. Yerkes was given a letter which stated, in effect, that Arab buyers would purchase the statues on arrival in Paris, following inspection, for $30 million.

Respondent Insurance Company of North America (INA) agreed to issue a certificate covering the 222 statues for a voyage from Singapore to Marseilles, then to Paris, for $30,307,500, and then reinsured the risk, retaining for itself $6 million in coverage.

Prior to the departure of the TOYAMA from Singapore, petitioner's freight forwarder, Damco, advised petitioner that the French customs authorities would require detailed invoices

showing the nature of the goods and their value. Petitioner was further advised by Damco that the French customs authorities required a deposit amounting to 10% of their true value in order to permit the goods to be imported into that country. Petitioner thereupon made up his own valuation report which listed the 222 statues, and appraised them at 1 million french francs, i.e. $235,294.12. Petitioner gave that document to Damco but he does not know whether Damco gave it to the French customs authorities. In any event, the buddhas and fablegods did not leave Singapore for Marseilles. When the collection was not shipped from Singapore within the time period of the coverage, INA canceled the policy.

On July 9, 1982, Keller of Yerkes' office sent a letter to petitioner advising him of the cancellation. The letter states in part:

> "Please understand that the risk, as originally presented to INA, was that of a sold shipment, i.e. a completed sale, conditioned only upon the buyers approval when it arrived in Paris. The value was established by an appraisal and by a letter from the buyer (we have copies of both)."

On October 17, 1982, petitioner, with the help of his friend O'Leary, composed and sent the following telex to Yerkes' office:

> "re shipment of buddhas and fablegods
>
> with reference your letters may 17th and july 9th 1982 re the above i would like to inform that a wealthy Athens shipowner mr. George Papalios has expressed considerable interest in my collection and is prepared subject to inspection of all pieces upon arrival in Athens to negotiate in the us dollrs. 30.000.000 area in respect of the purchase of my collection. i therefore request you to approach underwriters in order to obtain their agreement to reinstate the transit cover Signapore Europe.
>
> my sealed container no fwak 3372281 (seal no cc 00400) will be transported by Damco from sea shore transporta-

> tion pte ltd container depot at jurong—s'pore to the s'pore port authority for further shipment to Piracus [sic], greece. storage at a bonded warehouse located at agiou dionissiou Piraeus has been arranged as well as supervision by two retired armed policmen during trucking from port to warehouse (appr. 5 kms). fire and theft insurance has been effected for us dollrs, 30,000,000 with intertrust, a subsidiary of interamerican, Athens, 30% of which amount reinsured with Munich re.
>
> consignee of my container is mr. George Serafimides, manager of new Rotterdam ins. co. greece who is at the moment making enquiries in order to book a first class vessel for the trip Singapore-Piraeus, the captain of which willing to undertake supervision of (un) loading and stowage of my container with antiques.
>
> within the next weeks i trust therefore to be able to advise a satisfactory vessel. please confirm to my cable-address in Bangkok (knight-bangkok) that underwriters are willing to reinstate coverage for the above mentioned voyage subject to vessel being approved by underwriters."

Petitioner knew that the information which he conveyed to his broker was false in the following respects:

(1) George Papalios had never expressed interest in purchasing his collection in the amount of $30,000,000;

(2) Storage in a bonded warehouse in Piraeus had not been arranged;

(3) Fire and theft insurance for $30,000,000 had not been effected with Intertrust or any other insurance company; and

(4) Serafimides was not making inquiries to book a first-class vessel for the trip from Singapore to Piraeus.

The October 17 telex was received by Yerkes, and insurance

covering the 222 statues for an amount of $30,630,750 from Singapore to Piraeus was placed with the respondents herein.

Yerkes did not apprise the respondents' representatives that the London market had previously voided a policy of insurance for the same objects for a voyage from Singapore to Holland on the grounds of nondisclosure and misrepresentation in that the statues were replicas and highly-overvalued because he did not know of the prior voiding. Yerkes did not advise any of the respondents that petitioner had purchased the 222 statues for between $60,000 and $65,000 because he was unaware of that fact. Yerkes did not tell any of the respondents that petitioner's telex of October 17, 1982 contained misinformation because he did not know the facts contained in petitioner's telex were incorrect.

Although petitioner had approached a reputable freight forwarder, Damco, when he intended to send the buddhas and fablegods from Singapore to Holland, and again when he wished to ship them from Singapore to Marseilles, and had booked, on both occasions, ScanDutch vessels in liner service, on this occasion petitioner saw fit to allow his good friend Serafimides to arrange for the transportation of his cargo, albeit Serafimides had advised petitioner that he was unfamiliar with shipping and ship owners. Serafimides booked a Greek tramp, the ALIAKMON RUNNER, to carry the buddhas and fablegods from Singapore to Piraeus.

In late January, 1983 petitioner's container was laden on board the ALIAKMON RUNNER. On February 7 or 8, 1983, the ALIAKMON RUNNER sank in the Indian Ocean at approximately a position of latitude 10° 01′ north, and longitude 63° 18′ east, where the water is 2.5 miles deep.

The hull underwriters of the ALIAKMON RUNNER did not believe that the sinking was fortuitous and declined coverage under the hull policy. An action is now pending in Hamburg between the vessel owner and underwriters.

POINT I

The doctrine of *uberrima fides* should stand.

The argument that the centuries' old doctrine should be abrogated was never presented to either the district court or the court of appeals by the petitioner.

It is inappropriate to make it at this time. Recent readings of the Washington Post, New York Times and the Wall Street Journal leads one to the conclusion that any rule of law that requires "good faith" dealings in the market place should not be abrogated.

The case of *Puritan Insurance Co.* v. *Eagle S.S. Company, S.A.*, 779 F.2d 866 (2d Cir. 1985) is not in conflict with the decision of that court in the instant case. In *Puritan,* after a four-day bench trial, the district court found, as a matter of fact, that the nondisclosure of a prior loss was not material to the risk. The Court of Appeals for the Second Circuit recognized and restated the doctrine of *uberrima fides,* but in a two to one opinion refused to reverse the factual findings of the district court, saying:

> "Our task on appeal is to determine whether the trial court has applied the proper legal principles and whether its findings of fact are 'clearly erroneous'. If those findings are not 'clearly erroneous', they may not be disturbed. . . ."
>
> (p. 871)

This Court has expressly followed a policy of harmonizing the United States law of marine insurance with that of England. *Calmar S.S. Corp.* v. *Scott,* 345 U.S. 427, 442-43 (1953); *Queen Ins. Co. of America* v. *Globe & Rutgers Fire Ins. Co.,* 263 U.S. 487, 493 (1924); *see* G. Gilmore and C.L. Black, Jr., *The Law of Admiralty,* 55-56 (2d ed. 1975).

The English Marine Insurance Act of 1906 provides, in part:

"18.

(1) Subject to the provisions of this section, the assured must disclose to the insurer, before the contract is concluded, every material circumstance which is known to the assured, and the assured is deemed to know every circumstance which, in the ordinary course of business, ought to be known by him. If the assured fails to make such disclosure, the insurer may avoid the contract.

(2) Every circumstance is material which would influence the judgment of a prudent insurer in fixing the premium, or determining whether he will take the risk."

British Shipping Laws, Vol. 10, §591, p. 590.

United States law is to the same effect:

> "It is well established that the parties to a marine insurance contract are held to the highest degree of good faith. Under this obligation, called *uberrimae fidei,* the party seeking insurance is required to disclose all circumstances known to him which materially affect the risk. *Btesh* v. *Royal Ins. Co., Ltd., of Liverpool,* 49 F.2d 720, 721 (2d Cir. 1931)."

Puritan Insurance Co. v. *Eagle S.S. Company, supra* at p. 870.

The doctrine of *uberrima fides* should not be abrogated.

POINT II

The District Court and the Court of Appeals applied proper standards in granting summary judgment.

In the case of *King* v. *Aetna Insurance Co.,* 54 F.2d 253 (2d Cir. 1931), the court had before it the question of whether an underwriter of a yacht could void the policy on the ground the assured failed to disclose that he had recently purchased the vessel for $2,500 when he applied for and received a valued policy of insurance for $40,000. The court found for the underwriter and said:

". . . we think any reasonable person must know that the fact that the vessel had just been purchased for $2,500 would materially affect the decision of an underwriter about to issue a $40,000 valued policy upon her. It is held that concealment of an overvaluation so excessive as to make the risk speculative vitiates the policy. Ionides v. Pender, L.R. 9 Q. B. 531; Thames & Mersey Marine Ins. Co. v. Gunford Ship Co., L.R. [1911] A. C. 529. The valuation of a vessel at sixteen times what she had just cost the insured likewise makes the risk speculative; the insured has less incentive to protect her than he would had he paid a sum some where near commensurate with the stated value.

While ordinarily the materiality of the concealment is a fact for the jury [Muller v. Globe & Rutgers Fire Ins. Co., 246 F. 759 (C.C.A. 2)], the evidence in the case at bar was so clear that we think the court should have held the policy vitiated and have granted a motion to dismiss the complaint. . . ."

(emphasis added) (pp. 254-255)

The United States District Court for the Southern District of New York in the instant case found:

"It seems obvious to this court that as a matter of indisputable fact a prior underwriter's voidance of a thirty million dollar insurance policy on antiquities of dubious origin on the grounds that the goods were 'grossly overvalued' and inauthentic would have been material to any subsequent underwriter's decision to accept the risk. (A-37)*

* * *

No reasonable juror could conclude, under the facts of this case, that defendants would not have declined to em-

*A- refers to pages in the Appendix to the petition.

> *brace plaintiff's requested thirty million dollar policy had they known of the prior London cancellation and of the incriminating contents of the telex from the London broker —at least not without subsequent opportunity for defendants to make their own investigation and perhaps to adjust the amount insured.* (A-38) (emphasis added)
>
> * * *
>
> Accordingly, faced with the undisputed fact that plaintiff failed to disclose, although he knew of, the London underwriters' cancellation and their stated reasons therefor, and the fact that no reasonable trier of fact could find that this information would not have been material to defendants' decision to take on the risk, this court determines that no genuine issue of material fact remains as to this non-disclosure to preclude a grant of summary judgment." (A-40)

In upholding the decision of the district court, the court of appeals found that the district court was cognizant that ordinarily materiality is a jury question, and stated:

> "Judge Motley recognized that the materiality of a non-disclosure is a finding of fact that ordinarily is a jury question. In this case, though, since the only possible outcome as a matter of law, even if a trial had been conducted, is in favor of defendants, Judge Motley was correct in granting summary judgment. See R.G. Group, Inc. v. Horn & Hardart Co., 751 F.2d 69, 77 (2d Cir. 1984); King v. Aetna Ins. Co., 54 F.2d 253, 255 (2d Cir. 1931). Indeed, it is precisely under these kinds of circumstances that summary judgment serves salutary purposes." (A-12)

In *Anderson* v. *Liberty Lobby, Inc.*, 106 S.Ct. 2505 (1986) this Court held that the standard for granting summary judgment "mirrors the standard for a directed verdict under Federal Rule of Civil Procedure 50(a) which is that the trial judge must direct a verdict if, under the governing law, there can be but one reasonable conclusion as to the verdict", and said:

> "The Court has said that summary judgment should be granted where the evidence is such that it 'would require a directed verdict for the moving party.' . . . And we have noted that the 'genuine issue' summary judgment standard is 'very close' to the 'reasonable jury' directed verdict standard: 'The primary difference between the two motions is procedural.' . . . In essence, though, the inquiry under each is the same: whether the evidence presents a sufficient disagreement to require submission to a jury or *whether it is so one-sided that one party must prevail as a matter of law.*
>
> * * *
>
> [T]he judge must ask himself . . . whether a fair-minded jury could return a verdict for the plaintiff on the evidence presented. . . . The judge's inquiry, therefore, unavoidably asks whether reasonable jurors could find by a preponderance of the evidence that the plaintiff is entitled to a verdict. . . ." (emphasis added) (p. 2512)

In *Celotex Corp.* v. *Catrett,* 106 S.Ct. 2548 (1986), this Court said:

> Summary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed 'to secure the just, speedy and inexpensive determination of every action.' Fed. Rule Civ. Proc. 1. . . . Rule 56 must be construed with due regard not only for the right of persons asserting claims and defenses that are adequately based in fact to have those claims and defenses tried to a jury, *but also for the rights of persons opposing such claims and defenses to demonstrate in the manner provided by the Rule, prior to trial, that the claims and defenses have no factual basis."* (emphasis added) p. 2525

In the instant case the district court in granting respondents' motion for summary judgment, and the United States Court of Appeals for the Second Circuit in affirming the lower court's decision, followed the standards set forth by this court.

CONCLUSION

The application for a Writ of Certiorari should be denied.

Respectfully submitted,

LOUIS P. SHEINBAUM
120 Broadway, Suite 1825
New York, New York 10271
(212) 227-3550
Attorney for Respondents

DONALD M. WAESCHE
WAESCHE, SHEINBAUM & O'REGAN, P. C.
Of Counsel

February 19, 1987

APPENDIX

Respondents' designation of corporate parents, subsidiaries and affiliates pursuant to Rule 28.1 of the Rules of this Court are as follows:

Respondent	*Designated Companies*
U.S. Fire Insurance Company	Xerox Financial Service, Inc. Crum & Forster Incorporated Constitution Reinsurance Corporation Navco Corporation
Insurance Company of North America	CIGNA Corporation CIGNA Holdings, Inc. Connecticut General Corporation
Centennial Insurance Company	Atlantic Mutual Insurance Company
Reliance Insurance Company	Reliance Group Holdings, Inc. Reliance Group Incorporated
Federal Insurance Company	The Chubb Corporation La Federacion Compagnia de Seguros, L.A. Seguros Illimani S.A. Bolivar Compania de Seguros del Ecuador
Royal Insurance Company of America	Royal Group, Inc.
Northwestern National Insurance Company	Armco Insurance Group Inc.
Highlands Insurance Company	Halliburton Company
Continental Insurance Company	The Continental Corporation